

PROCEDURAL HISTORY

I. NOTICE OF INVESTIGATION

The Commission opened the Bell Atlantic-Maine investigation of the AFOR on December 27, 1999 with a Notice of Investigation (NOI). The NOI was issued in accordance with the provisions of 35-A M.R.S.A. § 1302 (3) and §§ 9101-04, for the purpose of determining whether the Commission should continue, modify or terminate the AFOR that was implemented for Bell Atlantic-Maine (subsequently, Verizon Maine) by an Order issued in Docket No. 94-123 on May 15, 1995. Pursuant to the terms of that order, the AFOR was due to expire on December 1, 2000. The Commission identified eight possible issues for consideration in the NOI: the Service Quality Index, revenue requirements, the Price Regulation Index, designation of services into categories, competition, pricing rules, effects of the Bell Atlantic-NYNEX merger and issues concerning schools and libraries.

In the NOI, the Commission solicited comments from interested persons regarding the issues that should be addressed during the investigation and the process that should be followed in order to resolve issues as quickly as possible. The NOI was sent to a wide group of potentially interested persons, including all persons who were included on the Commission's service lists for the first AFOR investigation (Docket No. 94-123) and the *Pease* rate investigation (Docket No. 94-254) that served to establish the starting point for the first phase of the AFOR. The NOI requested initial responses by January 31, 2000. Comments were submitted by Bell Atlantic, the Office of the Public Advocate (OPA), the Maine State Planning Office (SPO), and jointly from the Maine Department of Education and the Maine State Library.

II. THE OPA'S MOTION FOR A REVENUE REQUIREMENT PROCEEDING

The OPA submitted a Motion to Commence Rate and Revenue Investigation of Bell Atlantic-Maine on March 10, 2000. In its motion, the OPA argued that the AFOR statute, 35-A M.R.S.A. § 9103(1), mandated that residential and small business ratepayers not be required to pay more for local telephone service as a result of the implementation of an AFOR than they would under traditional rate base rate of return regulation. To comply with this mandate, OPA asserted that the Commission must first determine what level of prices or revenues those ratepayers would be required to pay for local service under traditional rate of return regulation. The OPA therefore requested that the Commission initiate a rate investigation of the Company. Bell Atlantic responded to the OPA's motion in comments filed with the Commission and the OPA replied to Bell Atlantic's comments.

On June 20, 2000, the Commission issued an order denying the OPA's Motion to Commence Rate and Revenue Investigation of Bell Atlantic, ruling as a matter of law that the AFOR statute did not require a revenue requirement proceeding for the purpose of extending the AFOR, and as a matter of policy, that an earnings investigation was not

warranted. The OPA filed a Motion for Reconsideration with the Commission on July 10, 2000. Although the Commission granted the OPA's motion to reconsider, it declined to change its decision. In its August 22, 2000 Order on Reconsideration, the Commission stated that the OPA raised few, if any, new issues in its motion for reconsideration.

III. THE FURTHER NOTICE OF INVESTIGATION

The Commission issued a Further Notice of Investigation (FNOI) on June 26, 2000. The FNOI laid out specific proposals and questions regarding the terms and conditions of a revised AFOR that would take effect on December 1, 2000, when the first phase of the AFOR would expire. The Commission invited interested parties to file comments on the proposed AFOR contained in the FNOI. Subsequent to the FNOI, the following entities participated as parties: Verizon Maine (formerly Bell Atlantic), the OPA, AT&T of New England, and the State of Maine Executive Branch (EB) agencies, consisting of the State Planning Office, the Maine Department of Education, and the Maine Department of Economic and Community Development.

IV. PROCEEDINGS BETWEEN THE FNOI AND HEARINGS

Responding to the Commission's invitation to comment on the proposed AFOR contained in the FNOI, Verizon, the OPA and AT&T filed comments on August 18, 2000. The SPO also filed comments on August 23, 2000. Verizon filed reply comments on September 20, 2000 challenging the OPA's assessment of the current AFOR, asserting that AT&T's proposal to accelerate intrastate access rate reductions was unsound and arguing for the elimination of service quality performance monitoring. The OPA also filed supplemental and reply comments with the Commission on September 22, 2000 replying to Verizon's proposals, the SPO's comments, AT&T's comments and addressing service quality issues.

Following a telephone conference held on August 1, 2000, the Commission issued a procedural order on August 4, 2000 setting forth rulings by the Examiner and agreements reached by Bell Atlantic and the OPA concerning a schedule for production of certain materials requested by each party during discovery. On August 24, 2000, the OPA filed a Motion to Make Public Information Claimed to be Confidential by Bell Atlantic asserting that certain information Bell Atlantic claimed to be proprietary was not proprietary and should be made available to the public. The Commission later ruled on this motion and Verizon's motion for a protective order during the hearing held on March 9, 2001. After hearing argument concerning the material claimed to be confidential, the Hearing Examiner ruled that monthly and annual Service Quality Index reports should be publicly disclosed and that certain other material should remain confidential, thus denying in part and granting in part each motion.

At a Conference of Counsel held on October 25, 2000, the OPA expressed concern about the proposal in the FNOI to use a simplified process that would consist

mostly of argument. The OPA argued that the Commission should allow the parties to file testimony and conduct hearings. In an Order issued on October 27, 2000, the Commission responded to the OPA's concerns. It agreed to allow pre-filed testimony, if necessary, and to hold hearings. On October 31, pursuant to the request of the Commission Staff at the Conference of Counsel, the OPA listed the issues it believed should be addressed through written pre-filed testimony. On November 1, 2000, the OPA filed a proposed schedule. With some modifications, the Hearing Examiner adopted the OPA's proposed schedule in a November 11, 2000 Procedural Order.

In the October 27 Order, the Commission also determined that additional time was necessary because of the additional process that it had ordered. The Commission therefore extended both the termination date of the current AFOR and the date for establishing a new AFOR until May 29, 2001. Because Verizon had reasonably understood that the current AFOR would expire in 2000 and had not made its annual AFOR filing under the initial phase of the AFOR (normally due on September 1), the Commission allowed Verizon to make that filing on December 1, 2000, with rate changes to be effective January 1, 2001.

The Procedural Order also required the OPA to file a detailed description of its proposal to modify the AFOR. The OPA filed its Proposal to Modify the Current AFOR Plan on January 8, 2001. Also on January 8th, both the OPA and Verizon submitted pre-filed direct testimony of four witnesses each. In response to the direct testimony filed, both parties submitted pre-filed rebuttal testimony on February 16, 2001. Verizon also submitted testimony from an additional witness, Edward B. Dinan, on that date. The OPA moved to strike Mr. Dinan's testimony on February 23, 2001 based on six grounds, one of which was that Dinan's testimony was direct testimony rather than rebuttal and therefore was improperly submitted after the deadline for direct testimony. The Commission denied the OPA's motion to strike at the March 9 hearing.

V. HEARINGS AND SUBSEQUENT PROCEEDINGS

Witnesses, Alexander, Norton, Sweet (for the Public Advocate), Kane and Thomas (for Verizon) testified at the first day of hearings on March 9, 2001. During the first day the Commission and the Hearing Examiner made final rulings described above on two pending motions. The Commission held a second day of hearings on March 13, 2001. Witnesses Dinan, Shepard and Taylor (for Verizon) and Kahn (for the OPA) testified on the second day.

During the end of March and the beginning of April, the parties filed briefs and reply briefs discussing the proposed AFOR. After reviewing the briefs and the record, the advisors to the Commission issued an Examiner's Report on April 24, 2001 that recommended a revised AFOR. Exceptions and comments to the Examiner's report were filed by Verizon, the EB agencies, TAM and AT&T.

The Commission conducted deliberations on the Examiner's Report on May 7 and 8, 2001 and issued "Part One" of a two-part order on May 9, 2001. As permitted by Chapter 110, §§ 1003 of the Commission's rules, Part 1 stated the Commission's conclusions and stated that the reasons for those conclusions would be set forth in the Part 2 Order.

VI. PUBLIC PARTICIPATION

The Commission conducted four public witness hearings to provide a forum for public commentary on the Bell Atlantic AFOR. Hearings were held in Portland, Augusta, Presque Isle and Bangor on January 18, 23, 25 and March 7, 2001 respectively. Approximately 37 witnesses provided sworn testimony at the four hearings.